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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,245	12/21/2001	Robert Jew	3780-001-27	3401

7590 06/28/2005

Supervisor, Patent Prosecution Services  
PIPER MARBURY RUDNICK & WOLFE LLP  
1200 Nineteenth Street, N.W.  
Washington, DC 20036-2412

EXAMINER
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HUI, SAN MING R

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/024,245	<b>Applicant(s)</b> JEW ET AL.	
	<b>Examiner</b> San-ming Hui	<b>Art Unit</b> 1617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 April 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,8-17,20,23,24 and 26-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,8-17,20,23,24 and 26-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

S.O.C.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 8, 2005 has been entered.

Claims 1, 3, 8-17, 20, 23-24, and 26-34 are pending.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3, 8-17, 20, 23-24, and 26-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,874,093 ('093) in view of Penska, the abstract of JP 08-253408 and Merck Index, 11<sup>th</sup> ed., Monograph 6796, page 1081. Penska is reference of record.

'093 teaches a skin care cosmetics composition comprising molecule oxygen for providing beneficial effects to the skins. '093 also teaches saponins as useful as foam stabilizer (See col. 4, lines 9-21). '093 teaches  $\alpha$ -tocopheral, BHT and BHA as antioxidants in the skin care cosmetics composition (See col. 3, lines 10-21). '093 teaches carbon dioxide can be used a propellants that it can aid the penetration of oxygen to skin (See col. 4, lines 37-44). '093 also teaches other propellants such as fluorocarbons 1,1,1,2-tetrafluoroethane may be used (See col. 5, lines 10-20). '093 teaches also such composition is useful for skin care.

'093 does not expressly teach carbon dioxide in the weight amount herein claimed be incorporated in the composition. '093 does not expressly teach olive oil in the composition. '093 does not teach the herein claimed amount of the ingredients as recited.

Penska teaches the beneficial effect of carbon dioxide on skin.

JP 08-253408 teaches a cosmetic composition comprising 0.5-2% of carbon dioxide as useful to increase the blood flow and as skin care product (See the abstract).

Merck Index teaches olive oil as useful as emollient.

It would have been obvious to one of ordinary skill in the art at the time of invention to incorporate carbon dioxide or substitute carbon dioxide into the skin care

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composition of '093. It would have been obvious to one of ordinary skill in the art at the time of invention to incorporate olive oil in the skin care cosmetics composition of '093. It would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the herein claims amount to the skin care cosmetics composition.

One of ordinary skill in the art would have been motivated to incorporate carbon dioxide or substitute carbon dioxide into the skin care composition of '093 since carbon dioxide itself is useful as skin care active ingredient due to its beneficial effect to the skin and also its ability to aid the penetration of oxygen to the skin. Absent evidence to the contrary, possessing the teachings of the cited prior arts, one of ordinary skill in the art would have been reasonably expected the incorporation of carbon dioxide into the skin care cosmetic composition as useful and effective.

One of ordinary skill in the art would have been motivated to incorporate olive oil into the skin care composition since olive oil is a well-known emollient which can smoothen the skin. Incorporate such well-known ingredient beneficial to skin into single composition useful for the very same purpose would be obvious (See *In re Kerkhoven* 205 USPQ 1069). Furthermore, the optimization of result effect parameters (e.g., weight amount for the ingredients) is obvious as being within the skill of the artisan.

The method of applying the skin care composition for improving the skin appearance would therefore be obvious.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to San-ming Hui whose telephone number is (571) 272-

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0626. The examiner can normally be reached on Mon 9:00 to 1:00, Tu - Fri from 9:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, PhD., can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
San-ming Hui  
Primary Examiner  
Art Unit 1617